On account of the increase in the number of prisoners an increase is necessary in the amount allotted for the diet of prisoners. Hence a sum of Rs. 2,750 is required. Similarly a sum of Rs. 600 is required for miscellaneous, medical expenses, etc.

Mr. A. V. Moothedan *(Chalakkudi):* I do not wish to oppose the motion, but I want to bring to the notice of the Government that every civilised Government should see that these prisoners are given proper food and treatment. What I wish to say is that they should be given more nutritious food if you want to improve them. I think that butter-milk or *rasom* are not given to them daily.

Mr. K. P. Kannan Nayar *(Secretary to Government):* So far as the food is concerned, it is much better than that is served elsewhere.

Mr. A. V. Moothedan *(Chalakkudi):* Are they given butter-milk?

Mr. K. P. Kannan Nayar *(Secretary to Government):* Yes.

Mr. A. V. Moothedan *(Chalakkudi):* How many days a week?

Mr. K. P. Kannan Nayar *(Secretary to Government):* They are given butter-milk on all non-meat days.

Mr. E. Ikkanda Warriar *(Cheruthuruthi):* You don't give them sufficient butter-milk.

Mr. C. R. Iyyunni *(Trichur-South):* However, those who come from the jails are generally seen very healthy and fat. That is the experience.

Demand put and carried

GOVERNMENT BILLS

The Cochin Insolvency Act (Amendment) Bill

Mr. M. Sivarama Menon *(Advocate-General):* Sir, I beg to present before this House the Report of the Select Committee on the Cochin Insolvency Act Amendment Bill. The Select Committee met on two occasions and after mature discussions, they considered that no amendments were called for. As the Hon'ble Members are aware, there is a dissenting note attached to the report of the Hon'ble Member for Chalakkudi and with regard to the question as to whether 8 as. or less should be declared as dividend, he has tabled amendments. And those amendments would be considered at the time when the bill is taken up for consideration. With this statement of facts, I present this report of the Committee to this Hon'ble House.

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Mr. President: The Advocate-General may move that the Bill be taken into consideration.

Mr. M. Sivarama Menon *(Advocate General):* I beg to move that the Bill be taken up for consideration by this House.

Motion put and carried

Mr. A. V. Moothedan *(Chalakkudi):* I beg to move that *the figure eight in clause 2 sub-clause (1) may be changed to 4.* I may explain the reasons for this amendment very briefly. Our Government has set an example to the whole world in amending the Insolvency Law. It is quite true that in other parts of India, there is no provision for an insolvent to get anything for his maintenance. During the past twenty years, in the Anjikaimal District there have been ten to twelve cases of insolvency in which over as. 8 has been paid as dividend. If the Trichur District is also taken into consideration there will be about twenty cases for twenty years, and thus one case for one year. That is very meagre. Therefore, what I submit is that the dividend may be reduced from 8 as. to 4 as. It is only a minor amendment. It is not far-reaching as I shall explain presently. Suppose there is an insolvent whose debts come to about Rs. 10,000 and the assets collected by the Receiver is Rs. 6,000. So, for paying a dividend of 8 as., Rs. 5,000 is required. The balance is Rs. 1,000 and according to the amendment proposed by Government, the debtor will get Rs. 250 as his property. The man who had been able to borrow at one time Rs. 10,000 may be a rich man. That man will be getting Rs. 250 and the sum total of the dividend will be about 9 as. 2 ps. According to my amendment, for paying 4 as. in the rupee, Rs. 2,500 will be required. Then the balance will be Rs. 3,500. One-fourth of that will be Rs. 875 and the insolvent would get Rs. 875. The creditor will be getting 8 as. 2 ps. in the rupee in all. After paying the first dividend of as. 4 in the rupee and the insolvent's share the balance will again be redistributed among the creditors. The result is that according to the Government, where a creditor gets 9 as. 2 ps. in the rupee, he will be getting 8 as. 2 ps. according to my amendment. There is only a difference of one anna. Is it a very substantial difference? So, what I submit is, that this amendment is not at all substantial. The creditor will be losing only one anna. This is a time when several governments are trying to solve the problem of beggars. I think it is better to give them something.

It is only a minor amendment. My original idea was to reduce it still further, but I offered four annas as a compromise. So I would appeal to this House to re-consider my suggestion. It

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is not far-reaching and it is a subject affecting beggars. We should not try to increase the number of beggars. So I would request that the House may be pleased to accept this amendment.

Mr. A. Eachara Menon *(Chittur-Rural):* My amendment is to put as. 6 for as. 8 in section 2 (1). I agree with the preface of my hon'ble friend. But when he said that, he had been preaching for the beggars alone. I had occasions to know of creditors who had deposited everything that they had in the Bank of which about 50 per cent of them would get below Rs. 500. So I would request the House to consider this amendment seriously. I hope my hon'ble friend will accept this amendment.

മിസ്റ്റർ ടി. കെ. നായർ: സർ, എനിക്കു ഒരു ഇൻഫർമേഷൻ കിട്ടിയാൽ കൊള്ളാം. എന്റെ മാന്യസ്നേഹിതൻ മിസ്റ്റർ മുത്തേടൻ പറഞ്ഞതു പോലെ പത്തുകൊല്ലത്തിനകത്തു് ഒരു പത്താളുകൾക്കെങ്കിലും ഈ ബില്ലുകൊണ്ടു് ഉപകാരമുണ്ടാകണ്ടേ?

മിസ്റ്റർ എം. ശിവരാമമേനോൻ: അഞ്ചിക്കയ്മൾ ഡിസ്ട്രിക്ടു് കോടതിൽ ഫൈ കേസ്സുകൾ ഉണ്ടെന്നു കാണുവാൻ കഴിഞ്ഞിട്ടുണ്ടു്. തൃശ്ശൂർ ജില്ലാകോടതിയിൽ എത്രയുണ്ടായിട്ടുണ്ടെന്നു് അറിയാൻ സാധിച്ചിട്ടില്ല.

Mr. M. K. Devassy *(Adur):* 12 out of what number?

Mr. M. Sivarama Menon *(Advocate-General):* The statistics were called for by the Select Committee. According to the particulars furnished, the following are the details of Insolvency cases from the date of the Insolvency Act of 96. In 96, no cases at all. 97 also no cases. In 98, there were 35. The unsecured debts came to 3789. These figures were scrutinised by the Select Committee and it will be found that the dividend declared is Rs. 2,266—1—1. Similarly, figures up to 1115, that is from the date of the Insolvency Act, were called for. The figures supplied from the other courts where there is better material were also supplied. An analysis of the same is extracted below:

Below 1 anna	..	30	cases
Between 1 and 2 annas	..	30	,,
,, 2 and 3 ,,	..	16	,,
,, 3 and 4 ,,	..	10	,,
,, 4 and 5 ,,	..	11	,,
,, 5 and 6 ,,	..	1	,,
,, 6 and 7 ,,	..	3	,,
,, 7 and 8 ,,	..	2	,,
,, 8 and above	..	10	,,

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These are statistics which can be relied upon. With regard to the composition that have taken place, of course, no information has been supplied. It is not possible to collect that.

മിസ്റ്റർ ടി. കെ. നായർ: ആക്ട് ഉപകാരമായിട്ടാണ ഗവമ്മെണ്ട് ഈ ബിൽ കൊണ്ടുവന്നിരിക്കുന്നത്; ഒരു പത്തുപേക്കെങ്കിലും ഇതുകൊണ്ട് ഉപകാരമുണ്ടോ?

Mr. M. Sivarama Menon *(Advocate-General):* That will depend upon the circumstance of each case. I will explain that position later.

മിസ്റ്റർ ടി. കെ. നായർ: ഇപ്പോൾ ഗവമ്മെണ്ടിൽ നിന്ന പറഞ്ഞകാരണങ്ങളനുസരിച്ച് വളരെ ദയവായി കാര്യങ്ങൾ ചെയ്യാൻ ഗവമ്മെണ്ട ആലോചിച്ച സ്ഥിതിക്ക് അതു് ചിലർക്കെങ്കിലും ഉപകാരമായിട്ട ചെയ്യുകൂടേ? ഫ ണ. വെച്ചാൽ ഉപകാരം ചെയ്യാമെന്ന തത്വം സ്വീകരിച്ച എന്നല്ലാതെ യാതൊരാൾക്കും ഉപകാരമുണ്ടാകയില്ല. എന്റെ മനസ്സിലിരിതൻ മിസ്റ്റർ മൂത്തേടൻ പറഞ്ഞത്, ൻ ണ. ക ഫൈ. ആക്കിയാൽ ക്രെഡിറേഴ്സിനു വ ണ. ക ഫൈ കിട്ടുന്നുണ്ട്; അത് നാലണക്കാരമാക്കിയാലും ഒരു വ്യത്യാസവും വരുകയില്ല എന്നാണ്. അതിനു അട്ടേഹം പതിനായിരം ഉദ്ധരികയുടെ ഒരു കണക്കും ഇവിടെ പറയുകയുണ്ടായി. അതുകൊണ്ട എട്ടണ എന്നുള്ളതു നാലണ ആക്കണമെന്ന ഈ അമൻറ്മെൻറിനോടു യോജിക്കുന്നതിൽ വലുതായ കഷ്ടമുണ്ടെന്നു തോന്നുന്നില്ല. ഗവമ്മെണ്ട് എങ്ങുമില്ലാത്ത ഒരു നടപടി ഇവിടെ സ്ഥാപിക്കുവാൻ തീർച്ചയാക്കിയ സ്ഥിതിക്ക് അതു് അപൂർവ്വം ചിലർക്കെങ്കിലും ഉപകാരമാകത്തക്ക നിലയിൽ ഈ നാലണ ആക്കിത്തന്നാൽ കൊള്ളാമെന്ന അപേക്ഷിക്കുന്നു.

***Mr. M. Sivarama Menon** *(Advocate-General):* Sir, Government are opposing both the amendments. Under the Insolvency Act in force at present, under section 42, to entitle a person to absolute discharge, he has to satisfy the court particularly that it has not been due to his default that the creditors have not been able to realise a dividend of at least 8 annas in the rupee. When he so satisfies the court, of course, the court is given power to condone that inability and then grant him a discharge provided those conditions are satisfied. The hon'ble members may be pleased to keep in mind that this piece of legislation has no parallel in the Provincial Insolvency Act and therefore it is always fitting and proper that when we start a measure of this kind, we should not be radical. It must be a moderate measure in the sense that no serious objection can be raised to the passing of such a measure by persons in contract or in trade in Malabar and other parts of India. Now, this matter, though applicable by the courts in the State, will have repercussions on persons who are outside the State and we have to carry on dealings with people there. If persons in British India who are subject to the Provincial Insolvency Law think that our law as it stands here

*Speech is not corrected by the hon'ble member.

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gives such a large advantage to the debtor, in the shape of courts having the power to fix a sum of Rs. 2,500 to the insolvent, whether that will have any effect outside, will have to be considered.

Secondly, even in the present Towns Insolvency Act where there are no liberal provisions with regard to the dividend and other things, you do not find such a provision. There are provisions in the Insolvency Act even now by which the court can pay maintenance during the pendency of the insolvency proceedings. This will be a total outright grant to the insolvent when the final dividend is declared. So that, it is feared that a measure which takes in provisions to the effect that if a creditor is able to get a dividend of four annas declared by the court, it will, *ipso facto*, entitle him to an allowance of Rs. 2,500. That will appear to be rather hard not only in the eyes of persons who are dealing with people here, but also of persons who are not accustomed to such a law in other parts of India. Then, it may be considered for a moment that the law insists upon this particular fact that unless the insolvent satisfies the court that it is not possible to declare 8 annas in the rupee, not because he has defaulted, not because he has been careless in his transactions, but on account of circumstances, which he did not anticipate and which were beyond his control. When there is a special liability upon the debtor under the present insolvency law, to belittle the defect of that by the amendment we are making, we should specify that if he has got a dividend of four annas in the rupee, that is sufficient outright grant. Such a provision technically speaking, may not be said to be contradictory to this provision. We are belittling down the effect that is given to the provision under section 46 (1). We can only say that where a larger sort of benefit is sought to be conferred upon a debtor, there is no particular reason why we should fix up such figures as four annas and eight annas arrived at random. 8 annas can be said to be an unreasonable figure whereby the creditor is losing half the amount that he has paid and in such cases the principle always ought to be to give this benefit naturally to the person who has been rational in his business and who has always been not at all negligent in the discharge of his business. So that, such a person ought to take better care. If such a person who has been honest and bona fide in his transactions fails in his business, then of course, though he is not entitled to anything, may be given Rs. 2,500. That is the position of the Government. There may be cases where even Rs. 3,500 may not be sufficient for the maintenance of an insolvent who has got heavy responsibilities and a very big family. Therefore, when we legislate, we cannot take such particular cases into consideration. When section 42 insists upon the

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particular burden on the debtor to show that it has not been due to his default, there must be a maximum fixed which should be Rs. 2,500. Therefore no argument can be really urged to say that four annas is really the figure that ought to be put.

മിസ്റ്റർ ടി. കെ നായർ: ഗവൺമെണ്ടു് ഒരു ബില്ലു കൊണ്ടുവരുകയാണെങ്കിൽ അതുകൊണ്ടു് ഒരാൾക്കെങ്കിലും ഉപകാരമുണ്ടാകണ്ടേ എന്നാണു് എന്റെ ചോദ്യം.

Mr. M. Sivarama Menon *(Advocate-General)*: Now, the experience of the insolvency courts will make it evident that several persons who come to the insolvency courts are not really insolvent, and it may not be possible. As a matter of fact anybody who has experience in the insolvency court, will testify to the effect that the percentage of honest debtors are very few. And, in such cases, our courts are always very liberal in the award of maintenance as well as the application of the principles of the Insolvency Act. There are certain matters which are very difficult to prove. You may not be in a position to satisfy that he has hidden his property in his own house or elsewhere. Therefore there is the difficulty of proof with regard to this matter. At times, in most cases, the debtors are able to defeat creditors. And in the case of an honest debtor who fails in his business, it will be found that he will be in a position to ear-mark something to the satisfaction of his creditors. In such cases, the debtors and creditors go in for a settlement or compromise. The moment the debtor and creditor find by mutual adjustment the matter is settled at a reasonable amount, they are anxious to see that no receiver commission is given to the receiver. Therfore, they make a settlement out of court, and pay compensation out of court. Practically two persons have got relief. We have also to take the question that there may be several persons who are not getting something out of this.

And my submission to the Hon'ble House is that as we are for the first time making a striking departure, an innovation rather, in bringing into being an Insolvency Act, at any rate wise or appropriate, we should not at the very start go on with a figure which may appear to be abnormally low in the eyes of the world at large. And if it is only considered as a mere academic question, as I said before, it can be said that the Government holds the view of paying half the amount due. The Hon'ble Members for Chalakkudi and Chittur have tabled amendments; one says it should be four annas and the other six annas. With regard to the second amendment of Mr. Eachara Menon, under the present insolvency law, for the purpose of compensation, the court can demand security for payment of six annas in the rupee. And even if the compensation is made outside the court, the minimum can be insisted upon.

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Another question may arise in this. The court is at liberty to grant a conditional discharge or absolute discharge. Now, suppose the conditional discharge alone is given. That means I discharge you for the present but you are a person capable of working. You must work hereafter, earn something and then place those assets in the hands of the court. Suppose this is a conditional order that is given. After the passing of such a conditional order, you are going to give Rs. 2,500 outright. Will not that be also applicable to the person who has been given a conditional discharge? Absolute discharge in a way is something different from a conditional discharge. So that the figure of 8 annas as it appears in section 42 entitles the court to give an absolute discharge as long as that remains in force. I would humbly bring to the notice of this House that to reduce the figure to anything other than eight annas in the new amendment may not appear fair and for these reasons, Government are constrained to oppose both the amendments on the ground that this will have repercussions in other parts of the State. Secondly, on account of the operation of section 41 (1) and thirdly on the ground that when we have decided upon making this amendment, it is not appropriate to begin with the lowest figure, but to keep up moderation in all these cases. Government are therefore constrained to oppose both these amendments. It is a matter very difficult to prove how an insolvent has hidden his property. The Hon'ble Member for Chittur will see that his experience in this matter is quite contra. With regard to the insolvency arising from Mattancheri, I am sure the hon'ble members will satisfy that it is a case where you are trying to dye the red roses redder, as it were. In doing so, we are imposing a moderate measure.

Mr. M. K. Devassy *(Adur):* For 12 cases out of 100, we are making a departure. My submission is, there are only two alternatives.

Mr. M. Sivarama Menon *(Advocate-General):* These statistics do not take in the several compositions without any record in courts.

Mr. M. K. Devassy *(Adur):* You are speculating on unknown matters.

Mr. M. Sivarama Menon *(Advocate-General):* That is not. It is not the agriculturists who become insolvent. It is a matter of common knowledge that they get better advantage, when they give the sole property. It is not going to vitally affect as a practical disadvantage. If you are prepared to accept this amendment, in principle, is the advantage that is sought to be so large? The question is only whether the amendment proposed is reasonable. As I said before, the debtor has to satisfy the court of his *bona fides*

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and that he is not able to come up to that figure. Taking all these factors into consideration, I would say that it is not wise or proper that the minimum should be brought down from eight annas to four annas and the Government are therefore opposing the amendment.

മിസ്റ്റർ ടി. കെ. നായർ. ഇൻസോൾവൻസി ഡെറോഴ്സിന്റെ രക്ഷക്കുവേണ്ടിയുള്ള ഒരു ബില്ലല്ലേ ഗവമ്മെൻറ് കൊണ്ടുവന്നിട്ടുള്ളത് ?

Mr. M. Sivarama Menon *(Advocate-General):* Not for all.

മിസ്റ്റർ ടി. കെ. നായർ. അതിൽപ്പെട്ടവക്കു ഒരു രക്ഷകിട്ടണം.

Mr. M. Sivarama Menon *(Advocate-General):* You must also consider that the Insolvency Act does not come as a piece of legislation for the debtors alone, but it is also equally applicable to the creditors. And we must keep up the balance. Between an extreme view and a highly conservative view, a moderate view has to be taken in all such matters. Government have been guided by the figure of 8 annas contained in section 42 (1). That will be an appropriate criterion and it is not fair to disturb that. It is not possible to specify all persons.

*Mr. V. J. Mathai *(Planters):* Mr. President Sir, it is not my intention to make a speech on this matter. I want neither to oppose or to support. I want to place only certain matters affecting this question which is a very large one. In the first place, we see the handicap under which the creditors will be placed. As soon as the insolvency petition comes up, he is served with a notice and then he has to conduct the case. Interest ceases as soon as the adjudication takes place, and all the interest that he used to receive at 6 per cent up to that date ceases. Secondly, he has to conduct the case and then to bring to the notice of the court from the proceedings of the court that a trader is an honest or a dishonest one. Heavy expenses are incurred. In very many cases as the Hon'ble Member for Law has suggested parties have already transferred their properties. It is very difficult to trace their hidden properties. At a time when the insolvent has already transferred his properties in the name of his wife and children, it would be very difficult for any presiding officer to find it out. And that has been the experience of all. Then, after all this, the question comes as to what exactly the creditor ought to get. These are the difficulties. Now, when the time comes, we have also to consider what benefit an insolvent debtor can get if the insolvency proceedings are relied upon. There is one insolvent who is put under obligation. The number of creditors will be 50 or 100. We do not know whether in the case of these 50 creditors, 49 are themselves in a worse position

*Speech not corrected by the hon'ble member.

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than the insolvent himself. That aspect has also to be considered by this House with sympathy. You will be adding to the number of beggars by passing this amendment. My point is while one debtor wants relief, the Government which is responsible to everybody will have to consider the fate of the petty creditors also. You will find them in a worse position than the insolvents themselves. That is one aspect of the question. We have also to consider the several handicaps under which the creditor is put.

And secondly, on the question of the figures quoted by the Hon'ble Member for Chalakkudi. It is not quite correct to say that in place of 9 as. 2 ps., according to Government, a creditor will get 8 as. 2 ps., if Mr. Moothedan's amendment is accepted. There is no guarantee. What I mean to say is after paying 4 annas in the rupee what you pay to the insolvent is a quarter of his property. We have to consider the implications of this question. Sometimes he may benefit much more than the creditors themselves, in this case. Should we give such a great advantage to these persons? Thirdly as has been referred to by the Hon'ble Member for Law, the consideration of an insolvent is based upon two basic factors. One is whether he is an honest insolvent. It is very difficult to prove that. Then the question whether he is able to give 8 annas in the rupee. How can one end of the law be different from the middle and the end. In section 42, we see that you are entitled to get only 8 annas in the rupee. That is the consideration in section 42. And then later on, when we come to section 81, you are entitled to get more, even though you pay only 8 annas in the rupee. Therefore, I say that we owe a responsibility to ourselves as well. When we enact a piece of legislation, we have to see whether the beginning, the middle and the end all tally. And fourthly, as the Hon'ble Member for Law has put it, our court is becoming an international court. We expect all parts of the world to have dealings with us. I have heard a story of jurisdiction. I have heard the story of the unreliability of the Cochin Law. If I remember correctly, taking into consideration all these facts, the outsiders will be distrustful of our dealings. For example, the law in Australia is different, in Switzerland also it is different. It is a charity that is being given by the Government—some consideration to the insolvent. And even if that is the question, I would only suggest, first of all we get this charity and generosity. Then we shall see that possible amendments are brought. The Hon'ble Member for Chalakkudi can very well bring an amendment.

The House rose for lunch at 1-5 p.m. and re-assembled at 2-45 p.m. with the Hon'ble the Deputy President in the Chair.

Mr. N. Govinda Pai *(Nominated):* Mr. President Sir, In the early days when the Insolvency Act came into force here, it was

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generally thought that it was very undignified to go into the court with an insolvency petition. But as time went on, just as jails became very popular after Mahatma Gandhi entered them, even with the advent of poverty it has begun to be very popular to enter the insolvency courts. As a matter of fact, what one finds in the commercial world is that this has become a profession, so to say, among some of the very shrewd merchants. They begin by buying goods on cash basis and afterwards this turns gradually to be on credit basis. Gradually, when they find that the trade is in full swing, and that money is flowing into their hands freely, if they do not find it easy to pay, as it is not in these competitive days, then failing becomes a profession. What happens then? The man sells his goods, appropriates all the cash and keeps it with somebody else in whom he confides or turns them into ornaments, the proprietorship of which will always vest with his family. And then he says, "I have no money to pay. I have failed. You can do whatever you like." What generally happens is, in 90 per cent cases, because a merchant cannot afford to enter courts, always they come to a compromise and with the hidden money, he compromises by a payment of four or six annas in the rupee and the second day he carries on trade in the name of somebody else. That is what we see. Those cases that enter the court under this section are very rare. And such cases would be those that even, though they have appropriated much of the money by this illegal means, they do not concede to pay a reasonable and meagre 4 or 6 annas in the rupee that are expected of them. Then comes the time and it is only in these cases that these people enter the courts for insolvency process. And if we are going to be guided ourselves in this matter by the few cases that enter the court and the statistics that are indicated by the court, I do not think it will be very fair. I must say in all fairness that the Government has taken a very liberal view in this matter. And I can support this only as a piece of compromise. It is said that only *bona fide* people will get advantage of this section. But the Lawyer friends would know how difficult it is to prove the malafides. And as the Hon'ble the Advocate-General himself expressed sometimes back, we find very few *bona fide* cases that enter the court. So I strongly oppose these amendments that are brought in this House.

മിസ്റ്റർ പോപ്പട്ടലാൽ ഗോവൽനലാലൻ: മിസ്റ്റർ പ്രസിഡെണ്ട്, സർ, ഇ ഭേഗതിയെ ഞാൻ എതുക്കുന്നു. ഗവമ്മെണ്ടിൽനിന്നും ഇവിടെ അവതരിപ്പിച്ചിട്ടുള്ള ബില്ലും സന്തോഷത്തോടു കൂടി അനുകൂലിക്കുവുന്ന ഒന്നാണെന്നു പറയുവാൻ എനിക്കു സാധിക്കയില്ല. വളരെ കഷ്ടപ്പെട്ട പണമുണ്ടാക്കി. ആ പണം കടംകൊടുക്കുമ്പോൾ നൂറുക്ക് വ ണ. വീതം വാങ്ങിച്ചാൽ മതിയെന്നു വെച്ചിട്ടുള്ളതു തന്നെ സ്വീകരിക്കുത്തക്കതല്ല. അങ്ങിനെയിരിക്കെ

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പിന്നെയും അതിൽ നാലണ വീതമുള്ള ഒരു സംഖ്യ വിട്ടുകൊടുക്കണമെന്നു വരുകയാണെങ്കിൽ അതു കടം കൊടുത്തവക്കല്ല, കടം വാങ്ങിച്ചവക്കാണു രക്ഷയായിട്ടുള്ളതു്. കടം വാങ്ങിച്ചാൽ അതു കൊടുക്കാതിരിക്കുവാനുള്ള ഭാഗത്തെപ്പറ്റി പ്രധാനമായി ഒരു രഹസ്യമുള്ളതു് ഈ അവസരത്തിൽ എനിക്കു തുറന്നുപ്രസ്താവിക്കാതെ നിവൃത്തിയില്ല. ആ രഹസ്യം എന്താണെന്നുള്ളതു് ആ ഭാഗക്കാരെ സഹായിക്കുന്ന കൂട്ടർതന്നെ ഇവിടെ പറഞ്ഞുകഴിഞ്ഞിരിക്കുന്നു. വാങ്ങിച്ച സംഖ്യകൊടുക്കുവാൻ നിവൃത്തിയില്ലാതെ വരുമ്പോഴാണു് ഇൻസാൾവെൻറു് ആകുവാനിടവരുന്നതു്. കടം വാങ്ങിച്ച പണംകൊണ്ടു ചരക്കുകൾ വാങ്ങി കച്ചവടംചെയ്തു് കിട്ടുന്ന ആദായത്തിലും കൂടുതലായി ചിലവുചെയ്തു, അന്തസ്സിൽ നടക്കുക, കല്ല്യാണം മുതലായ കാര്യങ്ങൾക്കു വിനിയോഗിക്കുക, ചാർച്ചക്കാരുടെ പേരിൽ വീടുകൾ, വസ്തുക്കൾ, പണ്ടങ്ങൾ മുതലായവ വാങ്ങിക്കുക ഈ തരത്തിലാണു മിക്കവാറും ഇൻസാൾവെൻറായിത്തീരുന്നതു്. ഭാര്യക്കു് ആഭരണങ്ങളും മാറും ഉണ്ടാക്കികൊടുത്തിട്ടുണ്ടെങ്കിൽ അതൊന്നുംകടംതീർക്കുവാൻ വേണ്ടി പണം കൊടുത്തിട്ടുള്ള ആളുകൾക്കു തൊടുവാൻപോലും സാധിക്കയില്ല. ഇപ്പോൾ വ്യ അണവീതം ബഹുമാനപ്പെട്ട ഗവൺമെണ്ടു നിശ്ചയിച്ചിട്ടുള്ളതിൽ നിന്നും കൂടി നാലണ കുറക്കുവാൻ ആഗ്രഹിക്കുന്നുണ്ടെങ്കിൽ അതു വളരെ സങ്കടകരമായിട്ടുള്ളതാണു്. വാസ്തവത്തിൽ മാനം മര്യാദയായിട്ടു ജീവിക്കണമെന്നു മോഹമുള്ളവർക്കുടി ഇൻസാൾവെൻറാകുവാൻ മാത്രമാണു് ഈ അമൻറുമെൻറു പ്രയോജനപ്പെടുന്നതു്. കടം കൊടുത്തവരെക്കാളും അന്തസ്സോടുകൂടി കടം വാങ്ങിച്ചവക്കു ജീവിക്കുവാൻ സാധിക്കുന്ന ഒരു മാർഗ്ഗമാണു ഈ അമൻറുമെൻറു് സ്വീകരിക്കുന്നതുകൊണ്ടു വരുന്നതു്. ആവശ്യത്തിനു ധാരാളമായി പണം കടം കൊടുക്കുന്നവക്കു കൂടി മനഃസ്ഥിതിക്കു് ഒരു മാറ്റം വരുത്തുവാനും, ഈ രാജ്യത്തെ കൊടുക്കൽ വാങ്ങൽ തീരെ ഇല്ലാതാകുവാനും പ്രാരംഭമായി തീരാവുന്ന ഒന്നാണിതു്. അതുകൊണ്ടു് ബഹുമാനപ്പെട്ട ഗവൺമെണ്ടിനോടു് എനിക്കു പറയുവാനുള്ളതു് ഇപ്പോൾ ഗവൺമെണ്ടു നിശ്ചയിച്ചിട്ടുള്ളതായ വ്യ ണ. എന്നുള്ളതു കൂട്ടി പന്ത്രണ്ടോ പതിനാലോ അണ ആക്കിയാൽ നന്നായിരിക്കുമെന്നാണു്. ഈഭേദഗതി സ്വീകരിക്കയാണെങ്കിൽ വെല്ലിംഗ്ടൺ ഐലണ്ടിൻെറ കാര്യത്തിൽ സംഭവിച്ചതുപോലെ ഇതും ഒരു ബ്ലണ്ടർ ആയിത്തീരുവാനാണിടയുള്ളതു്. അതുകൊണ്ടു ഈ എട്ടണ എന്നുള്ളതു് കൂടുതലാക്കുവാൻ ഞാൻ ഗവൺമെണ്ടിനോടു പ്രത്യേകം അപേക്ഷിച്ചുകൊള്ളുന്നു.

Mr. M. K. Devassy *(Adur):* Sir, I support this amendment moved by Mr. Moothedan. I am very happy that the amendment has received greater importance than was anticipated. Most of the arguments advanced both by the Hon'ble Member for Law and repeated by my hon'ble friend would have been quite relevant before a Court of Law in an Insolvency matter. I for one cannot follow how one can attach any weight to an argument which says that it is impossible to find out a case where a debtor has hidden his property. If that is so, I think, we should question every judicial finding arrived at in every court of law and it will be beneath the dignity of this House to question the correctness of judicial findings. Wherever an insolvent has been granted discharge, it

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has been granted in perfect judicial order and when the court has been satisfied that the debtor was honest. Therefore, all these arguments of proving or disproving the malafides of the debtor do not avail of. The only question is that taking it for granted that the finding of the court is correct when an insolvent has been discharged and when he is deemed as an honest debtor, whether this council will be justified in allowing him a maintenance portion. When all is said and done, it is only a question of arbitrarily settling the amount. Government fix it at 8 as; Mr. Moothedan wants to fix it at 4 annas; Mr. Eachara Menon wants it at 6 as. and somebody else at some other amount. This is simply a question of arbitrary settlement. But the reason that should guide the House is whether the Bill as brought before the House will serve any useful purpose. I perfectly agree with my Hon'ble friend Mr. Popatlal in saying that the Government may as well raise it to 14 as. It won't make any difference whatever whether it is 8 or 14 as. From the figures that have been read in the Council, only 12 per cent, if I remember correctly, can get the proposed relief. Why should there be a departure from the accepted principles of law, unless it serves some useful and substantial purpose. Therefore, my submission before the House is, if the Government intends doing these people some good, if the Government thinks that honest debtors who have been driven to insolvency courts because of difficulties should be granted some benefit, some means of livelihood for their maintenance, you should make it real. Otherwise, do not have an infructuous law and especially when that law is a deviation from the law accepted in other parts of India. Therefore, my submission is that if you really mean what you say, if the Government intends that this bill should be useful, it should be made applicable to as many deserving people as possible. I can well understand the weight of the argument if the proportion varies with the amount of debt of the insolvent. There is no such case. The only question is that the number of people to whom this law applies should be in the proportion of the amount. Therefore, when we enact a legislation we should make it as useful as possible and applicable to as many deserving people as possible. I would say that when a court discharges an insolvent he should be deemed to be an honest insolvent who can very well deserve the concession of the Government being granted to him. On this ground, I support this amendment.

Mr. A. B. Salem *(Mattancheri)*: I rise to oppose the amendment. We have heard much on either side of the case. To my mind, the simple idea is that a man who borrows money must pay and must pay the last pie. That is the inexorable law. It is no

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proper at all for any legislature to protect people who borrow money with the intention of not paying what they borrowed. I do not think it is just for any legislature to defeat men who lend their hard-earned money, who deposit their money on trust with merchants and others who misbehave and either lose that money or misappropriate it or do whatever they like. To give protection to these people is certainly unjust and wrong. I would say that such a debtor should not be given anything. Persons must suffer for their misdeeds and it is not at all proper or just to say that the insolvent must be protected by legislation.

Mr. M. K. Devassy *(Adur):* Let us oppose the Bill.

Mr. A. B. Salem *(Mattancheri):* I am not opposing the Bill, because the Government have brought the Bill. Out of respect to the Government, I am not opposing the Bill. It will not be practicable to oppose the Government. I will support the Government so far as they go to say, after having paid 8 as., we would, as a matter of grace, on account of the cry that is being raised in the country, accept a half of it, to the extent of Rs. 2,500 to be paid to the insolvent. Now, take for instance, the case of poor widows. What about the poor people who do not know what to do with the little money they had and had deposited with merchants and others who went to the insolvency courts to wipe away all their money? Supposing there are fifteen annas in the rupee and the creditors are many. This man, the debtor will get, after paying 8 as. much more than the dividend. The creditor gets less and the insolvent gets more. Is it just? I certainly think it will be unjust and I do not think that I can say anything more than what the Hon'ble Member for Law has spoken regarding the fairness of the proposition. I think it is very fair and it will be a little too much from our point of view. We will support the measure and oppose the amendment.

മിസ്റ്റർ കെ. അയ്യപ്പൻ: സർ, വിഷമമേറിയ ഒരു നിയമകാര്യമായതുകൊണ്ട് ഇതിനെക്കുറിച്ച് ഒന്നും പറയേണ്ടാ എന്നാണ ഞാൻ വിചാരിച്ചിരുന്നത്. എന്നാൽ ഞങ്ങൾക്കുംകൂടി മനസ്സിലാക്കാവുന്ന ചില അടിസ്ഥാനതത്വങ്ങളെക്കുറിച്ച് പ്രസംഗിച്ചുകേട്ടതുകൊണ്ട് സ്വല്പം പറയാതെ നിവൃത്തിയില്ല. ഒരു ബഹുമാനപ്പെട്ട മെമ്പർ ഇൻ എക്സാറബിൾ ലോയെപ്പറ്റി ഇവിടെ പറയുകയുണ്ടായി. നിയമസംബന്ധമായ കാര്യങ്ങളിലുള്ള പ്രാഥമികതത്വങ്ങളുടെ അജ്ഞതകൊണ്ടല്ലാതെ ആരെങ്കിലും ഇൻ എക്സാറബിൾ ലോയെപ്പറ്റി പറയുമോ? ഞങ്ങളുടെ ഇൻ എക്സാറബിൾ ലോ പലിശ വാങ്ങുവാൻ പാടില്ല എന്നാണെന്ന് ഒരു കൂട്ടരും, ലാസ്റ്റ് പൈ വരെ പലിശ വാങ്ങാമെന്ന് വേറൊരുകൂട്ടരും പറയുമ്പോൾ ഞങ്ങൾ വിചാരിക്കുന്നത് ഇതൊന്നും ഇൻ എക്സാറബിൾ ലോ അല്ലെന്നാണ്. മനുഷ്യരുടെ ആവശ്യത്തിനുവേണ്ടിയാണ നിയമമുണ്ടാക്കേണ്ടത്. അതിനു് കൊച്ചി ഗവൺമെൻറതന്നെ ഒന്നാംതരം ഒരു ഉദ്ദാഹരണമാണ്. ശരിക്കു കാര്യവിവരമുള്ള ഒരു ഗവൺമെൻറായ

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തുകൊണ്ടാണ് ഇങ്ങിനെ ഒരു ബിൽ കൊണ്ടുവന്നതു്. ഇതിൽ ഞങ്ങൾക്കു പറയുവാനുള്ളതു് കടക്കാരെ രക്ഷിക്കണമെന്നു കാണിച്ചാൽ മാത്രം പോരാ അവരെ ശരിക്കു രക്ഷിക്കുകതന്നെ വേണമെന്നാണു്. ബഹുമാനപ്പെട്ട ഗവൺമെൻറ് അഡ്വക്കേറ്റവർകൾ ഇനി പറയുവാൻ ഒന്നുമില്ലാത്ത മാതിരിയിൽ, പറഞ്ഞതുതന്നെ വീണ്ടും ആവർത്തിച്ചാവർത്തിച്ചു് ഇവിടെ പറയുകയുണ്ടായി. കുറെ നേരം കേട്ടിരുന്നിട്ടും അതൊന്നും ഞങ്ങൾക്കു മനസ്സിലായില്ല. അദ്ദേഹം പറഞ്ഞ സംഗതികൾ മുഴുവൻ കേട്ടിരുന്നിട്ടും ഇവിടെ ഇരുന്നുകൊണ്ടു പറയുമ്പോൾ മനസ്സിലായിരുന്ന മാതിരി മനസ്സിലാകുന്നില്ലല്ലോ എന്നുതോന്നി. ഗവൺമെൻറ് സൈഡിൽ പോകുമ്പോൾ പറയുവാൻ നിവൃത്തിയില്ലാത്ത സംഗതികളുംകൂടി പറയേണ്ടിവരും. ഇന്നു് ഒരു പ്രത്യേക സ്ഥിതിയിലുള്ള സിസ്റ്റം നിലനിന്നുപോരുന്നതുകൊണ്ടാണു് പണക്കാക്കു് പണം ഉണ്ടാകുന്നതു്. അങ്ങിനെയുള്ള സിസ്റ്റത്തെ നിലനിറുത്തിക്കൊണ്ടു പോകുവാനായിട്ടു് സവ്വജനങ്ങളും അവരവരുടെ സവ്വശക്തികളും അതിൽ വിനിയോഗിക്കുന്നുമുണ്ടു്. ബഹുമാനപ്പെട്ട കാമേഴ്സു് മെമ്പറും മറ്റും പണമെല്ലാം ഒരു കാലത്തു് ഞങ്ങളുടെ ശ്രേഷ്ഠികൊണ്ടു് ഉണ്ടാക്കിയതാണെന്നു പറഞ്ഞിരുന്നു. അങ്ങിനെ ലാസ്റ്റ് ഡ്രാപ്പുവരെ വലിച്ചുപ്പോൾ അതിൻെറ കാര്യം ജനങ്ങൾക്കു മനസ്സിലായി. അവർ പറയുന്നു, നിങ്ങളുടെ നിയമം തെറ്റു്, നിങ്ങളുടെ തത്വങ്ങൾ തെറ്റു്, നിങ്ങളുടെ അടിസ്ഥാനം തെറ്റു് എന്നു്. ഇങ്ങിനെ ഒരു നില വരുമെന്നു കൊച്ചി ഗവൺമെൻറ് മനസ്സിലാക്കിയതിൻെറ ഫലമാണു് ക്രമേണ ഇതു നീട്ടിവെക്കുവാൻ ശ്രമിക്കാമെന്നുള്ള നിലയിൽ സപ്ലൈമെല്ലാം കടക്കാരനും പിഴച്ചുകൊള്ളട്ടെ എന്നു വിചാരിച്ചു് ഒരു ബില്ലുകൊണ്ടുവന്നതു്. മാഡറേറ്റു് ആകണമെന്നാണു് ഗവൺമെൻറ് പറയുന്നതു്. ഞങ്ങളും പറയുന്നതു് അതുതന്നെയാണു്. ബഹുമാനപ്പെട്ട ഗവൺമെൻറ് അഡ്വക്കേറ്റ് അവർകൾ പറയുന്നതു് ഇങ്ങിനെ ഒരു നിയമമുണ്ടാക്കിയാൽ കോടതിയിൽ വരാതെ തന്നെ അവക്കു ഋണംവരും എന്നാണു്. എന്നാൽ അതിൽ സപ്ലൈ കാര്യം ഇല്ലെന്നില്ല. പക്ഷെ അതുയും പോരാ, അതിലും അപ്പുറം പോകണം. ഗവൺമെൻറ് ഈ ഭാഗത്തു നിന്നുള്ള വാദങ്ങൾ കേട്ടു് രണ്ടു. ആക്ടുന്നതു ഋണമാണെന്നു തോന്നുന്നുണ്ടെങ്കിൽ ഇതു സ്വീകരിക്കണം. അതുകൊണ്ടു് മറ്റുള്ളവർ പറയുന്നതൊന്നും കേട്ടു് ഗവൺമെൻറ് ഭ്രമിച്ചുപോകരുതു്. ഞങ്ങളാണു് ഭൂരിപക്ഷം. ഞങ്ങൾ പറയുന്നതു് അനീതിയാണെങ്കിൽ കൂടി ഞങ്ങൾക്കു ഞങ്ങളുടെ മുഷ്കു് നടക്കണം. ക്രഡിറ്ററുടെ കയ്യിൽ കടുങ്ങികഴിഞ്ഞാൽ ഡെറ്റക്കു പിന്നെ യാതൊരു രക്ഷയുമില്ല. അതു സിംഹത്തിൻെറ കയ്യിൽ അകപ്പെട്ട മാൻകുട്ടിയെപ്പോലെയാണു്. ആ നിലയിലായിരിക്കുന്ന ഡെറേഴ്സിൻെറ സ്ഥിതി. ഏതെങ്കിലുംപ്രകാരത്തിൽ ഒരു രക്ഷയുമില്ലാതെ കിടന്നു ശ്വാസം വലിക്കുന്ന ഡെറേഴ്സിനു് ഇതുകൊണ്ടു് രക്ഷ വരണമെന്നു ഗവൺമെൻറ് വിചാരിച്ചിട്ടുണ്ടെങ്കിൽ ഈ ഭേദഗതി ഗവൺമെൻറ് സ്വീകരിക്കണം. ഗവൺമെൻറിൻെറ ഉദ്ദേശത്തിൽ ഞങ്ങൾ യാതൊരു ആക്ഷേപവും പറയുന്നില്ല. ബഹുമാനപ്പെട്ട ഗവൺമെൻറ് അഡ്വക്കേറ്റ് അവർകൾ അദ്ദേഹത്തിൻെറ പഴയ സ്ഥിതിഗതികളെല്ലാം ഓർത്തു് ദയവുചെയ്തു് ഈ ഭേദഗതി ഒന്നു സ്വീകരിച്ചാൽ വളരെ ഉപകാരമായിരിക്കും.

മിസ്റ്റർ ഇസ്മായിൽഹാജി ഈസാ സേട്ട്: മിസ്റ്റർ പ്രസിഡൻറ്, സർ, ബഹുമാനപ്പെട്ട ഗവൺമെൻറ് ഇവിടെ കൊണ്ടുവന്നിട്ടുള്ള ഇൻസോൾവെൻസി ബില്ലിനെപ്പറ്റി ഈ കൌൺസിലെ പല മെമ്പർമാരും പല് വിധത്തിൽ സംസാ

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രിക്കുകയുണ്ടായി. എന്നാൽ ഒരാൾ സാധാരണ രണ്ടു വിധത്തിലാണ് ഇൻസോൾവെൻറ് ആകാനിടയുള്ളതു്. ഒരു കൂട്ടരെപ്പറ്റി പറയുകയാണെങ്കിൽ കച്ചവടാവശ്യത്തിനുവേണ്ടി ചരക്കുകൾ വാങ്ങി വ്യാപാരം നടത്തി കുറെയധികം പണം കരസ്ഥമാക്കിയതിനുശേഷം അയാളുടെ മനസ്സിന്റെ ഭാവം മാറുകയും ആ മാറ്റത്തോടുകൂടി സ്വത്തുക്കളെല്ലാം കൈമാറ്റം ചെയ്യപ്പെടുകയും ചെയ്യുന്നു. അങ്ങിനെ കുറെ നാൾ നടക്കുമ്പോൾ പണം കൊടുത്തിട്ടുള്ളവർ വിചാരിക്കുന്നതു് അവന്റെ സ്വത്തു് ക്രമേണ വല്ലിച്ചുവരികയാണെന്നാണു്. എന്നാൽ വാസ്തവത്തിൽ സ്വത്തിന്റെ അവകാശമെല്ലാം നോക്കുകയാണെങ്കിൽ അതെല്ലാം മറ്റുള്ളവരുടെ പേരിലായിരിക്കും. അങ്ങിനെ സ്വത്തുക്കളെല്ലാം കൈമാറ്റം ചെയ്തതിനുശേഷം ഇനി നിവൃത്തിയില്ലെന്നു് അയാൾക്കു തോന്നുമ്പോഴാണു് ഒരു എട്ടണ ചിലവാക്കി ഇൻസോൾവെൻസി പെറ്റീഷൻ കൊടുക്കുന്നതു്. മറ്റൊരു കൂട്ടരെപ്പറ്റി പറയുകയാണെങ്കിൽ ഭൂസ്വത്തു ധാരാളമുള്ള ആളുകൾ കടം വാങ്ങി വല്ലിച്ചു് പണം കൊടുക്കുവാൻ നിവൃത്തിയില്ലാതെ അത്രത്തോളം സ്വത്തിലും കൂടുതലായി കടം വരുമ്പോൾ ചില ഘട്ടങ്ങളിൽ ഇൻസോൾവെൻസി പെറ്റീഷൻ കൊടുക്കുന്നുണ്ടു്. ഇനി മൂന്നാമതായി ഒരു കൂട്ടർ ഇൻസോൾവെൻസി കൊടുത്തില്ലെങ്കിലും അയാളെ ഇൻസോൾവെൻറാക്കുവാൻ വേണ്ടി പെറ്റീഷൻ കൊടുക്കുന്നുണ്ടു്. ഇങ്ങിനെ ഏതു രൂപത്തിലായാലും ഗവൺമെൻറ് നിശ്ചയിച്ചിട്ടുള്ള ഈ ഒരു സംഖ്യ അവർക്കു നൽകണമെന്നു വെച്ചിട്ടുള്ളതിൽ ഏതുവിധത്തിലും പണം കരസ്ഥമാക്കണമെന്നു വെച്ചു പ്രവൃത്തിക്കുന്ന കൂട്ടരെ ഉൾപ്പെടുത്തുവാൻ പാടില്ലെന്നാണു് എന്റെ അഭിപ്രായം. സ്വത്തു് വേണ്ടിടത്തോളമുണ്ടായിരിക്കയും, സ്വത്തുകൊണ്ടു കടം തീർക്കുവാൻ സാധിക്കാതെ വിഷമിക്കുകയും ചെയ്യുന്ന കടക്കാർക്കു മാത്രം ഗവൺമെൻറ് നിശ്ചയിച്ചിട്ടുള്ളമാതിരി സംഖ്യ കൊടുക്കുകയും, അവരെ രക്ഷിക്കുകയും ചെയ്യുന്നതു് ആവശ്യമായിട്ടുള്ളതാണു്. ഇൻസോൾവെൻസിക്കാർക്കു കൊടുക്കണമെന്നു നിശ്ചയിച്ചിട്ടുള്ള തുക എല്ലാ കൂട്ടർക്കും ഒരുപോലെയാണെന്ന ചരത്തക്ക നിലയിൽ ചെയ്താൽ അതു മോശമാകുമെന്നാണു് എന്റെ അഭിപ്രായം. ഇപ്പോൾ ഇവിടെ കൊണ്ടുവന്നിട്ടുള്ള ഭേദഗതിയിൽ രണ്ടണയും നാലണയും പറഞ്ഞിട്ടുണ്ടു്. അതു സ്വീകരിക്കുന്നതിൽ യാതൊരു അർത്ഥവുമില്ല. ഗവൺമെൻറ് നിശ്ചയിച്ചിട്ടുള്ള സംഖ്യ കൊടുക്കുന്നതിൽ പണം കരസ്ഥമാക്കണമെന്നു വിചാരിച്ചു പ്രവൃത്തിക്കുന്ന കൂട്ടരെ തീർച്ചയായും അതിൽ നിന്നും ഒഴിവാക്കേണ്ടതാണെന്നു മാത്രമേ എനിക്കു പറയുവാനുള്ളൂ.

Mr. P. Govinda Menon *(Mulakunnathukavu):* I wish to make a few observations.....

Deputy President: One point may be made clear by me. We are on an amendment. In fact, we have been transgressing from the scope of the amendment. That was not quite in order. Several members have spoken for and against the Bill. I was showing some latitude. I hope, therefore, that the Members will confine their arguments to the amendment alone.

Mr. P. Govinda Menon *(Mulakunnathukavu):* Sir, I would like to make a few observations on the Bill as well as the amendment brought forward by my hon'ble friends.

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Deputy President: As far as they have a bearing on the amendment.

Mr. P. Govinda Menon *(Mulakunnathukavu):* Two questions were raised by those friends who supported the amendment. One question was what is the number of persons, what is the number of insolvents who may be affected or who may be protected by the beneficent provisions of this Bill. And that question was raised, according to me, because, the real purport, underlying the Bill was mistaken. First of all, I wish to impress upon the Members of this House that the statistics referred to by Mr. Moothedan are not perfectly correct, because in referring to those statistics, all the cases in insolvency were not taken into consideration. It is not proper to do so. There are a large number of petty insolvencies. In fact, many of the insolvency petitions filed in our courts belong to that category. In certain cases where there are only debts and no assets, where there is nothing to be vested in the Official Receiver, persons who have something to pay and who are arrested and brought before the Court, put in insolvency petitions in order to get protection of the Law. In such cases, there is really no estate to be vested with the Official Receiver and in taking into consideration the percentage of insolvents who will be affected by this Bill, I believe, that such insolvencies should not be taken into consideration.

Secondly, there seems to be some confusion as to the persons who are going to be affected by this Bill. Now, in a large majority of cases, insolvency petitions are filed not by the agriculturists of our country, but by traders like Mr. Popat Lal and those who are now considered to be arguing for the creditors. In the case of the agriculturists, they have got lands, their assets are well known. I do not think any creditor will remain till he sees that the assets of the agriculturists are far below 4 annas or eight annas in the rupee. When it is found that such an agriculturist cannot pay his debts, they at once go to the courts. It is in the case of the traders and merchants that people do not know what their real position is; whether they have got a large amount of assets or not, or whether they will be in a position to pay their dues or not. The people having trade connections with traders and merchants do not really know the exact position of the traders. Therefore I want to impress upon this House this matter. It is a question generally between one trader and another trader. One trader advances money to another trader and the second trader becomes insolvent. What is the occasion, or what is the condition under which the legislature or the Government should step in to give succour to that insolvent trader? The principle of this Bill is that, so far as the honest debtors are

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concerned, where the insolvent is an honest man, the legislature must make some provision to see that he should be given something to live upon. In the case of an honest insolvent, something out of his assets should be set apart in order to maintain him after his discharge by the court.

The next question is, who is an honest insolvent? This Bill says that a man who is able to pay 8 annas in the rupee is an honest debtor. That is the main principle of the Bill. A man who cannot pay at least eight annas in the rupee, who knows his condition and who carries on his trade after knowing that he cannot pay eight annas in the rupee recklessly, and without any consideration as to his future, such a man is not an honest man. That is the irrefutable presumption that this legislation wants to lay down. On the other hand, if Mr. Moothedan's amendment is accepted, we see that a man who is able to pay at least four annas in the rupee is an honest debtor. We are now called upon to decide which of these two we are going to accept. Will you say, a man who is able to pay four annas in the rupee, is an honest debtor taking into consideration the several circumstances obtaining in our country? Others do not know the real condition of that man. That man at least ought to know that if he is able to pay at least four annas in the rupee, he is really cheating persons with whom he has dealings. On the other hand, on account of the several adverse circumstances, a man may become insolvent, but even his assets are still sufficient to enable the creditor to get 8 annas in the rupee. Here is the Bill which comes and says, he must be presumed to be an honest man. The presumption is that if he cannot pay at least 8 annas in the rupee, he is dishonest. That is the whole principle of this Bill. I submit that that being the principle, and that alone being the principle of the Bill brought by the Government, we are not in a position to accept the amendment moved either by Mr. Eachara Menon or Mr. Moothedan which in effect says that a man who is able to pay either 6 or 4 annas should be presumed to be an honest man. Now, the learned Advocate-General referred to one particular section of the Insolvency Act. That Section is, I think, Section 42, which says that a man who has paid 8 annas in the rupee should be given some further consideration in the matter of discharge and all those things. If Mr. Moothedan's amendment is accepted, this directly comes into conflict with the principle laid down in Section 42 of the Act. This is the only principle of the Bill. Will you or will you not, say that a man who is not able to pay 8 annas in the rupee to the creditors is an honest man?

Mr. M. K. Devassy *(Adur):* Suppose it is 12 annas.

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Mr. P. Govinda Menon *(Mulakunnathukavu):* It is because here it is stated that if you can pay eight annas in the rupee you can argue for the position that you are an honest man. It was on account of these circumstances beyond your control that you are put in such a sad plight.

Mr. M. K. Devassy *(Adur):* If the debtor is in a position to know that he can pay only something below one rupee, is it not dishonesty?

Mr. P. Govinda Menon *(Mulakunnathukavu):* These are arbitrary matters. The question is between four and eight annas. Are we in a position to say that a man who cannot pay eight annas in the rupee should be presumed to be an honest man?

Mr. M. K. Devassy *(Adur):* There are two figures; one bigger than the other.

Mr. P. Govinda Menon *(Mulakunnathukavu):* The competition is between four annas and eight annas. My submission before the House is when there are these figures, four and eight annas, commonsense and knowledge of the conditions obtaining in our country would warrant the interference with a man who is not able to pay at least eight annas in the rupee.....

As my friend put it, these are arbitrary matters. The question is between 4 annas and 8 annas. Are we in a position to say that a man who cannot pay 8 annas should be presumed to be an honest man? When there are two such figures as annas 4 and 8 annas, I humbly submit that commonsense and a knowledge of the conditions obtaining in this country would warrant the inference that a man who is not able to pay at least 8 annas should not be considered to be an honest debtor and he should not be given the protection of the court. I do not agree with the Hon'ble member for Adoor when he says that, if this amendment is not accepted, there is no occasion or necessity for this Bill. The question is not how many insolvents should be protected. The question is whether there should be a bill to protect insolvents, whether the number is one, twenty or thousand. That principle should be accepted and a legislation giving protection to an honest debtor should be welcome. While welcoming the amendment of the Advocate-General, I do not feel my way to support the amendment proposed either by Mr. Moothedan or by Mr. Eachara Menon.

* **Mr. M. L. Joseph** *(Latin Christians-Cranganur):* I must say that the House has wasted a lot of vocabulary on this amendment.

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* Speech not corrected by the hon'ble member.

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The Government side and the non-official side have been beating about the bush. While the Government think that they are going to give protection to some of the debtors, Mr. Moothedan, by his amendment, thinks that he will protect a greater number. I think none of these will be of any benefit to the insolvents. As far as the Anjikaimal District Court, Ernakulam, is concerned, during the last 18 to 20 years there have not been more than one or two cases wherein a dividend above 4 annas has been paid. As such, even if Mr. Moothedan's amendment, is passed by this House, it is not going to do any benefit to any of the insolvent debtors. As such I do not think there is any necessity in discussing over 4 annas or 8 annas and wasting the time of this House. Because I believe that this Bill is not going to benefit any individual and since we have been discussing over this matter for a longer time than is necessary I move for a closure.

Mr. K. R. Viswambharan *(Ezhuvas-Talappalli):* I second it.

Mr. A. V. Moothedan *(Chalakkudi):* I wish to speak a few words.

Deputy President: The mover of an amendment has no right of reply. If the member wants to explain any matter, I have no objection.

Mr. A. V. Moothedan *(Chalakkudi):* One of the arguments was that foreign credit will be affected. In the case of a person borrowing from foreign countries, the creditor will see what is the law applicable in the state of solvency. They will only look into that. They won't inquire what is the law of insolvency. This question of foreign credit is not relevant here. Regarding another point raised, I am surprised to find all the four members of the Mattancheri Town rising up and opposing this amendment. Cochin politics cannot be influenced by these few gentlemen here. Among them some are foreigners. Why should they influence our politics ? As regards 4 annas and 8 annas I have got authoritative figures. If any member has got any doubt regarding the mathematical accuracy, he can come to me and I shall explain to him. I do not want to misguide the House. There will be no difficulty. If my amendment is lost, the creditors will get one anna more. That is all. Another point is with regard to the connection between sections 41 and 61. Section 61 has nothing to do with section 41 as it is for the purpose of discharge. The point is not under what circumstances a debtor should be given discharge. Section 41 is not also connected with it. That argument is fallacious. Another argument of Mr. Govinda Menon is that there is a presumption that if a man is able to pay 8 annas he is honest. There is no such

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presumption. There must be clear evidence and the court must be satisfied with evidence on record. There is no presumption in either way.

Mr. P. Govinda Menon *(Mulakunnathukavu):* If he does not pay 8 annas, it is presumed that he is honest.

Mr. A. V. Moothedan *(Chalakkudi):* The court will start with a clean slate, and will decide from the evidence before it. There is no presumption either way. If the hon'ble member will read the section, he will understand it. I request the House to sympathetically consider this amendment. I press it.

Amendment put and negatived

Mr. A. V. Moothedan *(Chalakkudi):* A Poll, Sir.

Ayes

Mr. C. V. Iyyu
Mr. T. K. Nayar
Mr. M. K. Devassy
Mr. K. R. Viswambharan
Mr. K. R. Ramakrishnan
Mr. K. S. Panikker
Mr. L. M. Pylee
Mr. A. V. Moothedan
Mr. V. K. Krishnankutty
Mr. P. Achyuta Menon
Mr. K. M. Ibrahim

Noes

Dr. A. R. Menon
Mr. K. P. Kannan Nayar
Mr. K. Achyuta Menon
Mr. P. J. George
Mr. M. Sivarama Menon
Dr. T. Verghese
Rao Bahadur M. Narayana Menon
Mr. K. V. Menon
Mr. T. Narayana Menon
Mr. V. K. Aravindakshn Menon
Rama Varma Thampuran
Mr. M. Raman Menon
Mrs. Thankamma N. Menon
Mrs. C. R. Iyyunni
Mr. V. N. Damodaran Nambiar
Mr. V. J. Mathai
Mr. N. Govinda Pai
Mr. T. A. Ramachandra Ayyar
Mr. C. R. Iyyunni
Mr. P. Govinda Menon
Mr. Popatlal Goverdhan Lalan
Mr. Ismail Hajee Essa Sait
Mr. A. B. Salem
Mr. E. K. Madhava Menon
Mr. K. Kochukunhan Kaimal
Mr. K. Ashtamoorthi Nambudiripad
Mr. C. Kunjan Nambudiripad
Mr. C. N. Ittiravi Nambudiri
Mr. S. S. Koder
Mr. M. Nanu Menon
Mr. V. K. Kutty
Mr. N. V. Subbarayan Chettiar
Mr. C. K. S. Moni
Mr. K. P. Vallon

11 for and 34 against

Neutrals

Mr. V. K. Bhaskara Menon, Mr. Eachara Menon, Mr. B. M. Peter, Mr. M. L. Joseph and Mr. T. A. Ramachandra Ayyar.

Mr. A. Eachara Menon *(Chittur-Rural):* I do not wish to press my amendment.

Amendment by leave withdrawn

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Mr. A. V. Moothedan *(Chalakkudi):* I wish to move another amendment. "*Add the following in sub-clause (1), clause 2 of the Bill, after the word "creditors" or where there are sufficient assets for payment of such dividend*". I shall read the whole thing together. "In cases where a sum of 8 annas in the rupee has been paid as dividend to the creditors, or where there are sufficient assets for payment of such dividend, the court may" &c. According to the amendment of the Government the whole dividend has to be paid and after that only the insolvent will get anything. So what I want is, when there are sufficient assets they may be given something. Among the claims, some may be bogus ones. There will be some dispute between creditors and the Court will take some time to decide the dispute. Meanwhile the debtor will have to remain without anything. If the court is satisfied that there are sufficient assets, the debtors may be given their share before the final dividends are paid. That is the object of the amendment. Maintenance allowance is not generally granted. During the last 20 years of the working of the Insolvency Act there was only one instance or so. I move that the amendment may be accepted.

Mr. C. V. Iyyu *(Kunnamkulam):* I second it.

***Mr. M. Sivarama Menon** *(Advocate-General):* Mr. President, Sir, Government are opposing this amendment, because this amendment, if accepted, is impossible of being worked out. During the pendency of insolvency proceedings, as I have already had occasion to point out, there is a provision for the award of maintenance. The amendment that has been passed by this House says that in cases where a dividend of 8 annas has been declared, then such insolvent can be given one fourth of the value of the remaining property not exceeding Rs. 2,500 a year, if the conduct of the insolvent has been *bona fide*. My point is this. Suppose there is a case where the insolvent says that if all his assets are taken into account there will be an amount sufficient to declare a dividend of 8 annas, and suppose the creditors feel a doubt. The court will have to come to a decision as to what will be the dividend that has to be declared. Suppose in an insolvency proceedings there are certain valuable items of immoveable property. That property may really belong to another person and he may not have known that he is before the insolvency court. He may only be a benamidar. The other person may also be in actual possession of the property. Suppose, at the time that the court decides the question, the value of this property is also taken into consideration. At that time the party may not

* Speech not corrected by the hon'ble member.

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have filed any complaint and the court comes to a decision in the absence of any such information; because that person is not a party. Suppose, later on, the court finds that the properties do not belong to the insolvent. You cannot get back the property. It is therefore always a dangerous principle to make a preliminary finding with regard to the amount to be adjusted without ascertaining definite information about these things. It is only when the dividend has been paid that the insolvent is entitled to the concession. The question before the court is: "is there a certain possibility—I won't say a possibility, a certainty—that you will be able to declare a dividend of 8 annas". That question has to be decided beforehand. It is a cumbrous process to get the thing worked out. Suppose there are insolvency proceedings in the Cochin State, in Travancore and in British India. Suppose a dividend is about to be declared in one place and suppose the dividend has not been declared in another State. Some creditors may put in their claims here and some may put in their claims there. How can you ascertain that a definite dividend has been declared? Practically, therefore, it is not possible of being worked out. There are dangers involved in the process. The court has to adjudge on that question. On that ground Government are opposing that amendment. Government anticipate that this amendment is not capable of being worked out in practice. It may lead to difficulties, because what has once been paid to an insolvent cannot be got back. This amendment does not appear to the Government to be necessary.

Mr. A. V. Moothedan *(Chalakkudi):* Regarding the Advocate-General's statement, there will be no practical difficulty. I do not press the amendment. It is only in cases where there are sufficient debts that there is scope for this amendment.

Deputy President: There is no right of reply to the mover of an amendment.

There is no need to grant the hon'ble member permission to reply especially when he is not pressing it.

Amendment by leave withdrawn

Mr. A. Eachara Menon *(Chittur-Rural):* Sir, I move the following amendment.— *After clause 2(1) add Explanation "For the purpose of calculating the dividend, the court shall also take into consideration the rate of dividend paid through courts or otherwise outside Cochin State".* This is an innocuous amendment. There may be assets and liabilities here and elsewhere. The amendment only wants that the dividend paid outside the State should also be taken into account. I am sure this will be accepted.

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M. T. K. Nayar *(Pazhayannur):* I second it.

Mr. M. Sivarama Menon *(Advocate-General):* This amendment also is opposed by Government. Here also there are practical difficulties standing in the way. All the assets that are in Travancore or other places may not have been taken into consideration by the courts here. Where the matter is already settled, there can be no difficulty. In the Agriculturists' Relief Bill, where land tax and income-tax are concerned, our State recognised that payment for the purpose of computing whether he is an agriculturist or not. In a pending insolvency proceedings how can we take into account the rate of dividend paid through courts or otherwise? We have to assume that our courts cannot declare dividend till the courts in a foreign country declare the dividend. Our courts have to take into consideration the decisions passed by foreign courts. The question is, how long are we to wait. Can you anticipate that there will be a decision within a particular time? Suppose insolvency proceedings are pending and an Official Receiver has taken possession of the property. We will have to wait till dividends are declared by other courts. It will be futile to legislate on that matter.

Mr. Puthur Achyuta Menon *(Kattur):* I think the Advocate-General has forgotten the amendment. The amendment says that for the purpose of calculating dividends, the rate of dividends paid outside Cochin State should also be taken into account. The argument advanced by the Advocate-General is that we cannot wait till the other courts have disposed of the petitions. The amendment is only that if something has been paid, that also must be taken into consideration. The amendment does not want you to wait and see. The wording is " amount paid ". It refers to a past question. That dividend has already been paid. If the other courts have already declared a dividend, that should also be taken into consideration. That is what the amendment says.

***Mr. V. J. Mathai** *(Planters):* I shall take a concrete example. Suppose A is adjudged an insolvent by the Travancore court and the Cochin court. He is adjudged as insolvent in Cochin in 1115, and in Travancore at an earlier period. Suppose the Travancore court takes 5 years to complete the proceedings, which is normal there. Suppose the Cochin court wants to come to a decision regarding the amount to be paid as dividend. By this amendment, for deciding that question, we will have to take into consideration the rate of dividend paid in Travancore or to be paid in Travancore. I shall read the amendment. " For the purpose of calculating the

* Speech not corrected by the hon'ble member.

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dividend the court shall also take into consideration the rate of dividend paid through court or otherwise outside Cochin State". Therefore the question is whether our insolvency proceedings should be linked on with the insolvency proceedings elsewhere. It is notoriously known that the Travancore courts are very slow. The laws delays there are notorious. We have to link the insolvency administration to those in other courts. Secondly the wording is very unhappy. What is stated is that the court shall take into consideration the rate of dividend paid through courts. How can the rate of dividend be paid through courts? Only money can be paid through courts. Suppose it is known that a first dividend has been declared and suppose it is 6 as. and 8 ps. The Travancore courts give a further dividend of one anna. That comes to 7 as. 8 ps. To see whether 4 pies more can be given we have to wait till the end of the proceedings everywhere. Therefore it is a question of practical difficulty.

Mr. M. K. Devassy *(Adur):* The amendment does not contemplate cases where dividend is payable or to be declared everywhere. It is only in cases where dividends have actually been paid. Then it has to be taken into consideration. It does not contemplate a case where a dividend has to be paid.

Mr. M. Sivarama Menon *(Advocate-General):* With regard to creditors who have claim in Travancore as well as Cochin there is difficulty. There may be some creditors who have not claimed there. There may be some who have claimed. In calculating the dividend are we to take into consideration the cases of those who have actually received money in Travancore? They may have received amount in Travancore even before we have declared our dividend.

Mr. M. K. Devassy *(Adur):* Only when the amount has been actually paid.

Mr. K. P. Kannan Nayar *(Secretary to Government):* Supposing only a few of the creditors who have claims there proved their claims there and they are paid 2 annas. Suppose all the creditors here get 6 annas. Then a few of them will get 8 annas because they have put in their claim there also. In calculating the dividend are we to take into consideration those creditors only? The same remark applies to British courts as well.

Mr. Puthur Achyuta Menon *(Kattur):* When considering the previous amendment it was stated that in the case of an honest debtor ¼ of the remaining property will be given to him. When we come to that question will the amount paid by other courts will also be considered?

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Mr. M. Sivarama Menon *(Advocate-General):* In calculating the $\frac{1}{4}$ share, the value of the property is taken into consideration. We are there concerned only with the remaining properties.

Mr. A. V. Moothedan *(Chalakkudi):* There is already one explanation here. This explanation has to be numbered 2. You must either delete that explanation or number it as explanation 2.

Amendment put and negatived

Mr. A. Eachara Menon *(Chittur-Rural):* I do not wish to move my amendment.

Clause 2 of the bill put and carried

Clause I, preamble and title put and carried

Mr. M. Sivarama Menon *(Advocate-General):* I move that the bill be taken up and finally passed tomorrow.

Mr. K. P. Kannan Nayar *(Secretary to Government):* I second it.

Motion put and carried

The Cochin Fisheries Act (Amendment) Bill

Mr. K. Achyuta Menon *(Diwan Peishkar):* Sir, I beg to present the Select Committee Report on the Cochin Fisheries Act (Amendment) Bill and move that the Bill be taken into consideration. I think a short statement of facts will be necessary. There were 7 members in the Select Committee and the majority has supported the amendment brought by the Government in the first instance. The 3 members who have appended a dissenting minute have stated as follows. "We are agreed on the principle of the amendment brought forward, but the *parambas* contemplated by the Bill are mostly assessed as cocoanut gardens while actually they are not suitable for cocoanut plantation, unless they are replaced and made unfit for prawn fishing. They are thus more than heavily taxed. We are therefore of opinion that *parambas* assessed as *payattupattam parambas* alone need be brought under the purview of the amending Bill. The amendment may therefore be as follows.—After the word "wet lands" add the words "and *payattupattam* lands" in sections 5 (*a*), (*b*) and (*c*)." In other words the difference between the members is only this. The majority is for accepting the Government position that prawn fishing in *parambas* or *payattupattam* lands as well as accretion lands which carry an assessment of Rs. 5 should be taxed. The object of the Government was to bring in those *parambas* in the category of taxable lands. The minority wants to

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